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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

ALFONSO RIVAS,

Defendant and Appellant.

E048330

(Super.Ct.No. RIF145029)

OPINION

APPEAL from the Superior Court of Riverside County. John I. Kelly, Judge.
(Retired judge of the Kern Super. Ct. assigned by the Chief Justice pursuant to art. VI,
§ 6 of the Cal. Const.) Affirmed.

Patrick J. Hennessey, Jr., under appointment by the Court of Appeal, for
Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Gary W. Schons, Assistant Attorney
General, Jeffrey J. Koch and Scott C. Taylor, Deputy Attorneys General, for Plaintiff
and Respondent.

A jury convicted defendant and appellant Alfonso Rivas of possessing a controlled substance in a penal institution. (Pen. Code, § 4573.6.) Defendant contends that the trial court erred by admitting evidence of a prior arrest for being under the influence of heroin and that there was insufficient evidence to support his conviction. We affirm.

I. BACKGROUND

On July 11, 2007, at around 8:00 p.m., the dorm officer for defendant's prison dorm decided to search defendant's locker. Defendant was not by his locker. The dorm officer opened defendant's locker and saw an orange bandanna hanging down in the locker. While the bandanna was contraband she did not take it down. Instead, she lifted it up to look inside the locker. As she focused on a container of pens, she was called away to let an inmate back into the dorm. She was gone for "[a] minute or two." When she returned, defendant was spraying "some type of aerosol spray around his bunk area." The dorm officer asked defendant what he was doing. Defendant did not respond to the dorm officer. Instead, he walked over "to another inmate and passed an orange object to him." When defendant was walking away, his hands were "folded by his waist and his elbows [were] out . . . as if he was concealing something." The dorm officer recovered the orange object from the other inmate. It was an orange bandanna that contained three packages of rolling papers, a one-sided razor blade, and a latex glove fingertip containing two cellophane wrappers of heroin.

On April 5, 2004, defendant told a police officer that earlier that day he had used heroin intravenously. The officer concluded defendant was under the influence.

Defendant showed the officer where he had inserted the needle. The officer did not know if defendant was ever charged, but the officer had requested misdemeanor charges for being under the influence.

Prior to trial, defendant objected to the introduction of evidence concerning the April 4, 2004, incident and offered to stipulate that he “knows what heroin is.”

Defendant argued the evidence would be more prejudicial than probative. The People declined the stipulation, and the trial court allowed the testimony. The jury was instructed that it could only consider the evidence for the limited purpose of deciding whether defendant knew of the substance’s presence when he acted and whether defendant knew that the substance was a controlled substance.

II. ADMISSIBILITY OF PRIOR HEROIN USE

Defendant contends that the trial court erred in admitting the evidence of defendant’s April 4, 2004, encounter with the police detective because it was prejudicial. The People contend the admission was proper under Evidence Code section 1101, subdivision (b). We agree with the People.

Claims of error in admitting evidence are reviewed under the abuse of discretion standard. (*People v. Guerra* (2006) 37 Cal.4th 1067, 1113.) “Under this standard, a trial court’s ruling will not be disturbed, and reversal of the judgment is not required, unless the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice. [Citation.]” (*Ibid.*) “Evidence Code section 1101, subdivision (b), permits evidence of a defendant’s past criminal acts when relevant to prove a material fact at issue, such as identity, motive, or

knowledge. [Citation.] In prosecutions for drug offenses, evidence of prior drug use and prior drug convictions is generally admissible under Evidence Code section 1101, subdivision (b) . . . to prove knowledge of the narcotic nature of the drugs. [Citation.]” (*People v. Williams* (2009) 170 Cal.App.4th 587, 607 [Fourth Dist., Div. Two].) When a jury is instructed to only use evidence of prior drug use or convictions for limited purposes, it is presumed “the jury understood and followed those instructions.” (*Ibid.*) Evidence Code section 352 permits the exclusion of “evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury.”

Because defendant’s prior heroin use went to his knowledge, it was admissible. There was also no obligation for the People to accept defendant’s stipulation that he knew what heroin was. Indeed, such a generic statement of knowledge of heroin does not imply the same degree of familiarity as that provided by evidence of prior use. As for prejudice, the jury was instructed to only use the evidence for limited purposes, and was already aware that defendant was incarcerated as a convicted felon. Thus, the potential for undue prejudice was greatly diminished. Accordingly, we find no abuse of discretion.

III. SUFFICIENCY OF THE EVIDENCE

Defendant contends the evidence was insufficient to support his conviction. In particular, he complains that the evidence was weak and lacking “other readily available information.” Preliminarily, we reject the contention regarding the lack of additional

evidence, because our review focuses on the evidence that did exist rather than on the evidence that did not. (See *People v. Story* (2009) 45 Cal.4th 1282, 1299 [regarding sufficiency of evidence of absence of consent, appellate court erred in focusing on absence of injuries when defendant had used a gun in three other sexual assaults].) As to the strength of the evidence, we find substantial evidence sufficient to justify the jury's conviction of defendant.

“ ‘When considering a challenge to the sufficiency of the evidence to support a conviction, we review the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.’ [Citation.] ‘[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’ [Citations.] ‘[I]t is the jury, not the appellate court which must be convinced of the defendant’s guilt beyond a reasonable doubt.’ [Citation.] ‘In a case, such as the present one, based upon circumstantial evidence, we must decide whether the circumstances reasonably justify the findings of the trier of fact, but our opinion that the circumstances also might reasonably be reconciled with a contrary finding would not warrant reversal of the judgment. [Citation.]’ [Citation.]” (*People v. Lewis* (2009) 46 Cal.4th 1255, 1289-1290, fn. omitted.) The scope of the evidence includes both the evidence in the record as well as “reasonable inferences to be drawn therefrom.”

(*People v. Coffman and Marlow* (2004) 34 Cal.4th 1, 89.)

Defendant was a prisoner that had previously used heroin. Shortly after an orange bandanna was seen in defendant's prison locker, defendant passed an orange bandanna containing heroin to another inmate. These facts provide substantial evidence from which the jury could reasonably infer that defendant knowingly possessed heroin in a penal institution.

IV. DISPOSITION

The judgment is affirmed.

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RAMIREZ
P. J.

We concur:

RICHLI
J.

KING
J.